

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DANIEL LEE and all others similarly §
situated, §
§
Plaintiffs, § CIVIL ACTION NO.
vs. § 1:14-CV-00099-TCB-LTW
§
OCWEN LOAN SERVICING, LLC, §
§
§
Defendant. §

**MOTION TO DISMISS FIRST AMENDED COMPLAINT
BY DEFENDANT OCWEN LOAN SERVICING, LLC**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Ocwen Loan Servicing, LLC (“Ocwen”), by and through the undersigned counsel, hereby moves this Court for an order dismissing with prejudice the First Amended putative class action Complaint filed by Plaintiff Daniel Lee (“Lee”) in the above captioned case.

This lawsuit relates to a residential mortgage loan that Lee obtained in 2004, which is currently being serviced by Ocwen. Lee’s claims arise out of an initial communication and debt validation letter sent by Ocwen in July 2013 that purportedly violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* by (1) misidentifying the “true creditor” of Lee’s loan, (2) misstating

the amount of the debt, and (3) itemizing collection fees when there purportedly was no contract between the parties. Lee's claims have no merit and cannot withstand scrutiny under Rule 12(b)(6).

Lee fails to state a plausible claim against Ocwen under the FDCPA for several reasons. First, as a threshold matter, Lee fails to sufficiently allege that Ocwen is a "debt collector" and is therefore subject to the FDCPA for the alleged violations at issue. Second, each of the three violations alleged against Ocwen depends upon the assertion that the assignment of Lee's debt to MASTR 2004-HE1 (the "Trust") was somehow invalid. Not only does Lee lack standing to challenge any assignment as a matter of law, but there is no reason to believe that Lee's debt was not properly assigned. Any broad conclusory allegations suggesting otherwise does not satisfy the standard required to state a plausible claim. Third, Ocwen did not violate the FDCPA because the creditor identified in the letter was accurate, the debt was not misstated, and the underlying loan documents permitted the imposition of collection fees at issue. Accordingly, as more fully set forth in the accompanying Memorandum of Law, this action must be dismissed.

In support of its Motion, Ocwen relies on the record in this case and the supporting brief filed contemporaneously herewith, along with the relevant documents referenced therein, including various public records and judicial records before this Court.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1 (B) and (C), using 14-point Times New Roman font.

/s/ Elizabeth J. Campbell
Georgia Bar No. 349249

Dated: March 31, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2014, I electronically filed the foregoing
**MOTION TO DISMISS FIRST AMENDED COMPLAINT BY OCWEN
LOAN SERVICING, LLC** with the Clerk of Court using the CM/ECF system
which will send a notice of electronic filing to the following counsel of record in
this action:

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